



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2018-0811; FRL-9999-03-Region 6]**

#### **Air Plan Approval; Texas; Control of Air Pollution from Motor Vehicles**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ or State). The revisions remove rules from the Texas SIP that address the Low Income Repair Assistance Program (LIRAP) for certain participating counties.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2018-0811. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov> or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

**FOR FURTHER INFORMATION CONTACT:** Carrie Paige, EPA Region 6 Office, Infrastructure and Ozone Section, 1201 Elm Street, Suite 500, Dallas, TX 75270, 214-665-6521, [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov). To inspect the hard copy materials, please schedule an appointment with Ms. Paige or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

The background for this action is discussed in detail in our June 6, 2019 direct final rule and proposal (*see* 84 FR 26349 and 84 FR 26379, respectively). In the direct final rule, we approved the State’s submittal to remove from the Texas SIP rules that address motor vehicle anti-tampering requirements and the LIRAP for participating Early Action Compact (EAC) counties.

The direct final rule and proposal stated that if any relevant adverse comments were received by the end of the public comment period on July 8, 2019, the direct final rule would be withdrawn, and we would respond to the comments in a subsequent final action. Relevant adverse comments pertaining to the removal of LIRAP for participating EAC counties from the SIP were received during the comment period and the direct final rule was partially withdrawn on August 13, 2019 (84 FR 39976). The partial withdrawal only withdrew the portions of the direct final rule that addressed the removal of LIRAP for participating EAC counties from the SIP since we did not receive relevant adverse comments on the removal of the motor vehicle anti-tampering requirements from the SIP. Our June 6, 2019 proposal provides the basis for this final rule.

We received one comment in support of our direct final rule and one relevant adverse comment. The comments are posted in the docket for this action. Our responses to the comments are provided below.

## **II. Response to Comments**

*Comment:* The TCEQ expresses support of the EPA's approval of the SIP revision and corresponding removal of the associated State rules from the Texas SIP.

*Response:* We acknowledge the TCEQ's support of our direct final rule.

*Comment:* We received one relevant adverse comment from an anonymous source ("Commenter"). Commenter expresses concern that removal of the LIRAP program from the SIP would result in the State ending the program entirely. Commenter states that EPA should analyze the removal of this program based on the ability of motorists to come into compliance with the Inspection and Maintenance (I/M) program. Commenter states that if low income assistance programs are cut, motorists who are unable to afford repairs will defer or forgo repairs, resulting in lower compliance rates and thus, affecting emission reductions relied upon for the I/M program. Commenter states that Texas has several ozone nonattainment areas and therefore, EPA should run various Motor Vehicle Emission Simulator (MOVES) model scenarios to analyze whether removal of a low-income assistance program will affect compliance rates with the I/M program.

*Response:* EPA appreciates the Commenter's concerns. As mentioned in our direct final rule at 84 FR 26349, the Texas SIP rules at 30 TAC 114, Section 114.86 apply only to the LIRAP for EAC<sup>1</sup> Counties (EAC LIRAP) who chose to voluntarily participate in the program.<sup>2</sup> The EAC

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<sup>1</sup> The EAC program was developed to allow communities an opportunity to reduce concentrations of ground level ozone sooner than required by the CAA. The program was designed for areas that approached or monitored exceedances of the 1997 8-hour ozone standard and were in attainment for the 1979 1-hour ozone standard. Areas

counties were not required by the CAA nor federal regulations to implement an I/M program, but as participants in the EAC, Travis and Williamson Counties chose to implement an I/M program distinct from the State's SIP-approved I/M program in Chapter 114, Subchapter B applicable to nonattainment areas (*see* 70 FR 45542, August 8, 2005). The I/M program rules remain in the SIP. The LIRAP program assists low income vehicle owners in paying for repairs if their vehicle fails the I/M test. A person, however, must meet the I/M requirements for repair regardless of whether they receive funding assistance. Furthermore, motor vehicle operators cannot operate, or allow the operation of, a motor vehicle registered in an EAC county that does not comply with the requirements listed in Section 114.82(a).<sup>3</sup> Under these requirements, vehicles are required to undergo an annual vehicle safety inspection in order to be registered, and must comply with the applicable vehicle emissions I/M requirements in order to pass the inspection. The above requirements apply regardless of whether the vehicle operator is eligible for financial assistance under the EAC LIRAP. As such, the removal of the EAC LIRAP will not result in an increase in emissions. Since the LIRAP is not a CAA requirement, and its removal will not interfere with the area's ability to maintain the NAAQS, we find that the SIP revision meets the applicable 110(l) requirements. The Austin, Texas area, which includes Travis and Williamson Counties, is designated as attainment for all four of the ozone NAAQS and the 2016-2018 ozone design value for the Austin area continues to meet the 2015 ozone NAAQS.<sup>4</sup>

As mentioned in our direct final rule, the Federal I/M rules that apply to ozone nonattainment areas do not require states to implement a LIRAP-type program. The LIRAP rules found at 30

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that adopted EACs were required, among other criteria, to attain the 1997 8-hour ozone standard by December 31, 2007. For more on the EAC, see <https://archive.epa.gov/airquality/eac/web/html/basic.html>.

<sup>2</sup> The counties are free to opt out of the program at any time. See SIP submittal at pg. 3-1.

<sup>3</sup> This provision was approved by EPA and effective September 7, 2005 (see 70 FR 45542, August 8, 2005).

<sup>4</sup> See 56 FR 56694, page 56837, November 6, 1991; 69 FR 23858 (pages 23868 and 23938), April 30, 2004; 77 FR 30088, page 30151, May 21, 2012; and 82 FR 54232, page 54279, November 16, 2017. The area's compliance with the 8-hour ozone standard is posted at: [https://www.tceq.texas.gov/cgi-bin/compliance/monops/8hr\\_attainment.pl](https://www.tceq.texas.gov/cgi-bin/compliance/monops/8hr_attainment.pl).

TAC 114 Subchapter C, Division 2 adopted by TCEQ create a voluntary program in the I/M areas in Texas ozone nonattainment areas, and are not, nor have they ever been, part of the Texas SIP. To the extent that the comment refers to the nonattainment LIRAP rules, we note that the nonattainment LIRAP rules are outside of the scope of this rulemaking. Eligible counties may choose to voluntarily participate in the Texas LIRAP.

EPA disagrees that we should analyze whether removal of a low-income assistance program for two counties in the EAC program will affect compliance rates with the I/M program because motor vehicle operators must comply with I/M program requirements for repairs whether they receive financial assistance from LIRAP or not.

### **III. Final Action**

Pursuant to the CAA, the EPA is approving a revision to the Texas SIP submitted by the TCEQ on November 20, 2018. The revision removes the LIRAP for Participating EAC Counties at 30 TAC 114, Section 114.86, from the Texas SIP.

### **IV. Incorporation by Reference**

In this document, EPA is amending regulatory text that includes incorporation by reference. As described in the amendments to 40 CFR part 52 set forth below, EPA is removing provisions from Table (c) “EPA Approved Regulations in the Texas SIP” in the Texas State Implementation Plan (SIP), which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices,

provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: September 16, 2019.

**David Gray,**  
*Acting Regional Administrator, Region 6.*



40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart SS – Texas**

**§52.2270 [Amended]**

2. In §52.2270, the table in paragraph (c) is amended by removing the entry for “Section 114.86” under “Chapter 114 (Reg 4) – Control of Air Pollution from Motor Vehicles.”

[FR Doc. 2019-20313 Filed: 9/24/2019 8:45 am; Publication Date: 9/25/2019]